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EDWARD M. WOODWARD, SR.  
(1921-2000)

October 21, 2005

The Honorable Charles L. A. Terreni  
Executive Director  
Public Service Commission of South Carolina  
Post Office Drawer 11649  
Columbia, SC 29211

**DELIVERED BY HAND**

Re: Petition of MCImetro Access Transmission Services, LLC for Arbitration of Certain Terms and Conditions of Proposed Agreement with Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Company, Concerning Interconnection and Resale under the Telecommunications Act of 1996  
Docket No. 2005-67-C; Order No. 2005-544  
Our File No. 05-7010

Dear Mr. Terreni:

Enclosed are the original and sixteen copies of the Motion for Reconsideration on behalf of MCImetro Access Transmission Services, LLC. Would you please file the original, returning a clocked copy to me. Thank you for your assistance.

By copy of this letter I am serving by mail all counsel of record.

Very truly yours,

WOODWARD, COTHRAN & HERNDON

*Darra Cothran*

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DWC/bjd

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Kennard B. Woods, Esquire

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PUBLIC SERVICE  
COMMISSION

**BEFORE THE  
SOUTH CAROLINA PUBLIC SERVICE COMMISSION**

In Re: )  
)  
Petition of MCI Metro Access Transmission )  
Services, LLC for Arbitration of Certain Terms )  
and Conditions of Proposed Agreement with )  
Farmers Telephone Cooperative, Inc., Home )  
Telephone Co., Inc., PBT Telecom, Inc., and )  
Hargray Telephone Company, Concerning )  
Interconnection and Resale under the )  
Telecommunications Act of 1996 )

Docket No. 2005-67-C

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COMMISSION

**PETITION FOR RECONSIDERATION OR REHEARING  
OF MCIMETRO ACCESS TRANSMISSION SERVICES, LLC**

Pursuant to S.C. Code § 58-9-1200 and 26 S.C. Code Regs. 103-836(4), MCI Metro Access Transmission Services, LLC ("MCI") submits this petition to the South Carolina Public Service Commission (the "Commission") seeking reconsideration or rehearing of Order No. 2005-544. In support of its petition, MCI states the following:

1. On October 7, 2005, the Commission issued Order No. 2005-544 (hereinafter, the "Order") in which the Commission denied almost every proposal of MCI in favor of almost every position espoused by several rural incumbent local exchange carriers with respect to the interconnection agreement that was the subject of the arbitration proceeding between MCI and Farmers Telephone Cooperative, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., and Hargray Telephone Co. (collectively, the "ILECs"). On October 11, 2005, counsel for MCI was served with the Order by certified mail.

DATE: *OK - 10-11-05 D. Duke*  
BY: *OK D. Duke*

2. MCI submits that its substantial rights have been prejudiced because the findings, inferences, conclusions and decisions in the Order are:

- a. in error of law;
- b. violative of statutory provisions;
- c. clearly erroneous in view of the reliable, probative and substantial evidence in the whole record; and
- d. arbitrary and capricious or the result of an abuse of discretion.

MCI respectfully petitions the Commission to rehear or reconsider the Order for the reasons described below.

**THE ORDER ERRONEOUSLY DENIES MCI  
THE ABILITY TO PROVIDE WHOLESALE SERVICES**

3. In ruling upon Issue Nos. 6, 10(a), 15 and 17, the Commission, *inter alia*, erroneously held that MCI is not entitled to obtain interconnection, traffic exchange or number portability arrangements from the ILECs for purposes of providing services to Time Warner Cable Information Services, LLC (“TWCIS”) and other “indirectly” served customers (Order, at 11, 13), and that MCI is limited under the proposed interconnection agreement to providing telephone exchange service “directly” to MCI’s end user customers (which the proposed agreement defines as “retail business or residential end-user subscriber[s]”) (*Id.* at 7).

4. In so deciding, the Commission acted in an arbitrary and capricious manner and abused its discretion in adopting conclusions that violate federal law and that were clearly erroneous in view of the reliable, probative and substantial evidence in the record of the proceeding. Several of the Commission’s incorrect conclusions are enumerated below:

- “The carrier directly serving the end user customer is the only carrier entitled to request interconnection under section 251(b) of the Act” (*Id.* at 7; *see id.* at 8);
- Notwithstanding transit arrangements, “[n]either third parties nor their traffic are part of an interconnection agreement” between two interconnecting carriers (*Id.* at 8-11);
- The obligation to transport and terminate traffic under 47 U.S.C. § 251(b) and other law is limited to traffic directly to and from the end user customers of the two (2) contracting telecommunications carriers (*Id.* at 7, 9-10, 12-13);
- “Non-telecommunications” carriers may not interconnect, “directly or indirectly,” under 47 U.S.C. § 251(a) (*Id.* at 7, 9);
- “Unless and until the FCC does classify VoIP [i.e., voice over Internet Protocol] as a telecommunications service, VoIP providers do not have rights or obligations under Section 251 of the Act” (*Id.* at 9);
- In providing services to TWCIS, MCI is not providing “telecommunications service[s]” under 47 U.S.C. § 153(46) and within the purpose and intent of 47 U.S.C. §§ 251 and 252; nor is MCI a “telecommunications carrier” under 47 U.S.C. § 153(44) entitled to seek interconnection, the exchange of traffic, or number portability pursuant to 47 U.S.C. §§ 251 and 252 (*Id.* at 9, 11, 17);
- Number portability as contemplated by 47 U.S.C. § 251(b) occurs only as between two telecommunications carriers, and, for portability to be an obligation of a contracting carrier, the affected end users must have telecommunications

service both before and after the port. Although not offering any justification for so ruling, number portability is also restricted to the same “type” of telecommunications service, and the number must be used at the same customer location, before and after the port. A VoIP provider served by MCI would most likely argue that it is currently not required, and may never be required, to provide dialing parity or local number portability. Thus the ILECs need not port numbers to MCI for the use of TWCIS end users (*Id.* at 9, 16-18); and

- The language proposed by the ILECs concerning these issues is adopted (*Id.* at 14, 18).

5. The uncontroverted record evidence in this proceeding and prevailing law are contrary to the Commission’s conclusions. The evidence and law definitively prove that MCI is a “telecommunications carrier” under 47 U.S.C. § 153(44) that provides interconnection, local circuit switching, number portability and other services to TWCIS, and that the services provided by MCI to TWCIS are “telecommunications services” under 47 U.S.C. § 153(46). Moreover, MCI, as a “common carrier” pursuant to 47 U.S.C. § 153(10), plans to offer, and does routinely offer, to other customers and carriers the same or substantially similar services that it provides to TWCIS. (T. 220-21.) Thus, MCI has appropriately requested and is entitled to obtain interconnection, the exchange of traffic and number portability from the ILECs for the purposes it requires, pursuant to 47 U.S.C. §§ 251(a) and 251(b). (T. 57-58, 122, 161, 182-83, 187, 218-19, 220, 227, 241, 244.)<sup>1</sup>

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<sup>1</sup> References to the transcript of the proceeding are to “T.” followed by the page number.

6. Nothing in the FCC's orders or rules prohibits the interconnection, exchange of traffic or number portability that MCI requests. MCI and the ILECs have agreed that 47 U.S.C. §§ 251(a) and 251(b) govern the parties' interconnection agreement.<sup>2</sup> These statutory provisions require the ILECs to interconnect, exchange traffic and provide number portability for the services that MCI seeks to provide to TWCIS and other customers. (T. 37, 121, 125, 180-82, 186, 219, 235.)

7. That TWCIS or its end users generate traffic originating as VoIP or Internet Protocol ("IP")-enabled traffic does not relieve the ILECs of these obligations. MCI and the ILECs have agreed to treat the non-ISP-bound VoIP or IP traffic generated by TWCIS and its end user customers the same as other non-ISP-bound traffic under the proposed interconnection agreement, and the parties also have agreed that intercarrier compensation for all non-ISP-bound traffic under the proposed agreement, including IP-enabled traffic, would be based on the end points of the communications.<sup>3</sup>

8. FCC Rule 51.100 in any event allows for "information services," as distinguished from "telecommunications services," to be provided through interconnection arrangements.

9. The ILECs and their affiliates discriminate by providing VoIP and other services through their interconnection and number porting arrangements and agreements, which contain no limitations as to the types of service provided, or for providing service directly to the parties' end user customers. (T. 60, 69, 73, 110, 135-36, 171, 186, 194, 228-29.)

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<sup>2</sup> See the third "Whereas" clause and §1 of the General Terms and Conditions attachment, and §1.1 of the Interconnection attachment.

<sup>3</sup> See § 1.6 of the interconnection attachment of the parties' interconnection agreement, to be submitted as negotiated language to the Commission.

10. The Commission's restrictions regarding number portability are inappropriate because there is no limitation in the Telecommunications Act of 1996 concerning the obligation to port numbers based on the "type" of service the end user customer had before and after the port, or on whether the service to be provided after the port is "telecommunications services," or whether the porting carriers are "telecommunications carriers," or whether the service is to be provided at the same location both before and after the port. Notably, the Commission did not discuss why it adopted the ILECs' proposed language in this regard in its entirety. The FCC has required that porting take place when the type of service that results is to be different, as in the case of wireline to wireless porting. (T. 245.) The FCC also has held that VoIP providers are entitled to obtain numbers<sup>4</sup> and that their service may not be prevented from exchange with telecommunications carriers.<sup>5</sup> In any event, although the ILECs' VoIP affiliates are not so restricted, the manner in which MCI and TWCIS plan to engage in number portability will result in the same end user retaining the same location (T. 244), and MCI would not prevent TWCIS end users from porting their numbers and service to the ILECs. (T. 187.)

11. In summary, as discussed above the Commission has erred and violated statutory provisions, laws, rules and orders. Consequently, MCI's proffered language, and not that of the ILECs, should be adopted for use in the parties' interconnection agreement. (T. 127-30, 244.)

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<sup>4</sup> *In the Matter of Administration of the North American Numbering Plan*, CC Docket 99-200, Order, FCC 05-20, 2005 WL 283273 (F.C.C.), 20 F.C.C.R. 2957, 20 FCC Rcd. 2957 (rel. February 1, 2005) ("SBCIS Order").

<sup>5</sup> See *In the Matter of Madison River Communications, LLC and affiliated companies*, File No. EB-05-IH-0110, Order, DS 05-543, 2005 WL 516821 (F.C.C.), 20 F.C.C.R. 4295, 20 FCC Rcd. 4295 (rel. March 3, 2005).

**THE ORDER ERRONEOUSLY DENIES THAT INTERCARRIER  
COMPENSATION FOR ISP-BOUND TRAFFIC TO MODEMS LOCATED OUTSIDE  
THE LOCAL CALLING AREA  
SHOULD BE THE SAME AS FOR OTHER ISP-BOUND TRAFFIC**

12. The Commission also incorrectly held that, with respect to Issue Nos. 8, 10(b), and 13, Internet Service Provider (“ISP”)-bound traffic to the modems of MCI’s end user customers that are located outside the local calling area, and are served by virtual NXX codes, is not subject to compensation pursuant to the FCC’s *ISP Remand Order*<sup>6</sup> and other law.

13. By doing so, the Commission acted in an arbitrary and capricious manner and abused its discretion in adopting conclusions that violated prevailing statutory law and that were clearly erroneous in view of the reliable, probative and substantial evidence in the record of the proceeding. Several of the Commission’s incorrect conclusions are enumerated below:

- Such ISP-bound traffic is interexchange traffic, and is thus subject to access charges and not subject to ISP intercarrier compensation (Order, at 22, 24);
- The *ISP Remand Order* does not apply to ISP-bound traffic routed to virtual NXX codes (*Id.* at 24-25);
- The Commission’s prior orders<sup>7</sup> concerning virtual NXX codes and intercarrier compensation govern the disposition of MCI’s issues (*Id.* at 23-26);

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<sup>6</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151, CC Docket No. 96-98, Order on Remand and Report and Order, FCC 01-131, 2001 WL 455869 (F.C.C.), 16 F.C.C.R. 9151, 16 FCC Rcd. 9151 (rel. April 27, 2001), remanded but not vacated, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

<sup>7</sup> *In re: Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Docket No. 2000-516-C, Order on Arbitration, Order No. 2001-045 (January 16, 2001); *In re: Petition Of US LEC Of South Carolina, Inc. For Arbitration With Verizon South, Inc., Pursuant To 47 U.S.C. 252(b) Of The Communications Act Of 1934, As Amended By The Telecommunications Act Of 1996*, Docket 2002-181-C, Order on Arbitration, Order No. 2002-619 (August 30, 2002).



- The language proposed by the ILECs with regard to the foregoing issues is apparently adopted (*Id.* at 27), although the Commission did not explicitly so state with regard to the language proffered by the ILECs with regard to Issue Nos. 10(b) and 13.

14. The record evidence and law compel a different result from that reached by the Commission. The evidence and law demonstrate that ISP-bound traffic, including ISP-bound traffic to modems located outside the local calling area, is interstate “information access” service under the FCC’s jurisdiction, and subject to compensation similar to that for reciprocal compensation, and not subject to the access charge regime, including intrastate access charges.<sup>8</sup> (T. 211-12, 278-83, 286-87, 299.) Moreover, the Commission’s previous orders with regard to virtual NXX codes and intercarrier compensation did not specifically concern ISP-bound traffic, and, indeed, recognized the applicability of the *ISP Remand Order*. (T. 266-67, 271.)

15. In summary, as discussed above the Commission has erred, and has violated statutory provisions, laws, rules and orders. Instead of the ILECs’ proffered language, the language proposed by MCI with regard to these issues should be adopted.

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<sup>8</sup> *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP-Bound Traffic*, 16 F.C.C.R. 9151, CC Docket No. 96-98, Order on Remand and Report and Order (“*ISP Remand Order*”), FCC 01-131, 2001 WL 455869 (F.C.C.), 16 F.C.C.R. 9151, 16 FCC Rcd. 9151 (rel. April 27, 2001), remanded but not vacated, *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002).

**THE ORDER ERRONEOUSLY DENIES  
ISP-BOUND TRAFFIC THE INTERCARRIER COMPENSATION THAT THE  
FCC HAS DETERMINED IS APPROPRIATE**

16. The Commission incorrectly held that, with respect to Issue No. 21, the issue of what compensation is owed for ISP-bound or out-of-balance traffic is moot (*Id.* at 28). The Commission's decision implicitly approved the ILECs' "bill and keep" proposal for all intraLATA traffic, including ISP-bound and out-of-balance traffic, while subjecting all interLATA traffic, including ISP-bound and out-of-balance traffic, to access charges. Thus the decision was in error, for the reasons discussed above.

The ILECs' position was premised on the purported lack of negotiations between them and MCI concerning the compensation to be paid, when in fact the parties did negotiate this issue, and did so on the basis of the applicability of the *ISP Remand Order*, as discussed above, to ISP-bound and out-of-balance traffic. (T. 300-01.) The appropriate rate for all ISP-bound and out-of-balance compensation under the *ISP Remand Order* and its progeny is \$.0007 per minute,<sup>9</sup> and because the ILECs proposed no rate for ISP-bound traffic, they should be required to accept that rate.<sup>10</sup> (T. 158-59, 162, 300-01.) MCI's proffered language should have been adopted.

17. The Commission thus has erred, has violated statutory provisions, laws, rules and orders, and has acted in an arbitrary and capricious manner and abused its discretion in adopting conclusions that violated prevailing statutory law, including 47 U.S.C. § 253 (a) and (b), and has reached conclusions that were clearly erroneous in view of the reliable, probative and substantial evidence in the record of the proceeding.

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<sup>9</sup> See *In The Matter Of Petition Of Core Communications, Inc. For Forbearance Under 47 U.S.C. § 160(C) From Application Of The ISP Remand Order*, WC Docket No. 03-171, Order, DA 04-1764, 2004 WL 1403331 (F.C.C.), 19 F.C.C.R. 11,075, 19 FCC Rcd. 11,075 (rel. June 23, 2004).

<sup>10</sup> See *ISP Remand Order*, ¶ 89.

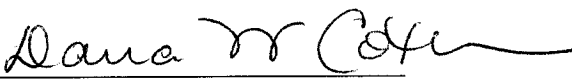
## **CONCLUSION**

The practical effect of the Order is to severely restrict the services that consumers in the affected service areas will enjoy, while implicitly permitting the ILECs to offer competing services premised on interconnection, traffic exchange and number portability similar to that requested by MCI. Nowhere does any statute, rule or order specifically and explicitly justify the conclusions reached by the Commission. Accordingly, and for the reasons stated, MCI urges the Commission to reconsider its decision in this proceeding, or, in the alternative, grant MCI's request for rehearing.

**WHEREFORE**, MCI respectfully requests that the Commission issue an Order of reconsideration and/or rehearing:

- A. Reversing its decision in Order No. 2005-544;
- B. Issuing a decision that adopts MCI's proffered language, or, in the alternative, grants MCI's request for rehearing; and
- C. Granting such other relief as is just and proper.

Dated this 21<sup>st</sup> day of October, 2005.

By: 

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# CERTIFICATE OF SERVICE

I, Betty J. DeHart of Woodward, Cothran & Herndon, Attorneys for MCI Metro Access Transmission Services, LLC, do hereby certify that I have served a copy of the Petition for Reconsideration or Rehearing of MCIMetro Access Transmission Services, LLC by causing to be deposited in a United States Postal Service mailbox copies of the same, postage prepaid, addressed to the persons indicated below.

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Betty J. DeHart  
Betty J. DeHart

SWORN to before me this

21 day of October, 2005.

Colonia Todd (L.S.)

Notary Public for South Carolina

My Commission Expires: 7/25/15